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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ALBERTO ALATORRE, JR,

11 Petitioner,

12 vs.

13 FIGAROA, Warden,

14 Respondent.

CASE NO. 13CV1622-JLS (MDD)

ORDER DENYING MOTION TO
APPOINT COUNSEL

15 On July 11, 2013, Alberto Alatorre ("Petitioner") filed a Motion to
16 Appoint Counsel. (ECF No. 4). In his Motion, Petitioner contends that
17 the complexity of the case, as well as alleged correspondence with the
18 state bar not presently before the Court, merits such appointment. *Id.*

19 "Clearly, there is no constitutional right to counsel on habeas."
20 *Bonin v. Vasquez*, 999 F.2d 425, 429 (9th Cir. 1993); *Chaney v. Lewis*, 801
21 F.2d 1191, 1196 (9th Cir. 1986). But, "Section 3006A(g) provides that
22 counsel may be appointed for an impoverished habeas petitioner
23 whenever 'the court determines that the interests of justice so require'. .
24 .." *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984), quoting, 18
25 U.S.C. § 3006A(g).


26 "Indigent state prisoners applying for habeas relief are not entitled
27 to appointed counsel unless the circumstances of a particular case
28 indicate that appointed counsel is necessary to prevent due process

1 violations.” *Chaney*, 801 F.2d at 1196. "Under *Chaney* the absence or
2 ineffectiveness of counsel does not in and of itself constitute a due process
3 violation. *Chaney* indicates only that discretion is abused when
4 appointment of counsel is 'necessary to prevent due process violations'
5 from occurring." *Bonin*, 999 F.2d at 429 (Citations omitted).

6 Under certain circumstances, a due process violation might occur if
7 the issues involved are too complex for the habeas petitioner. *Bonin*, 999
8 F.2d at 429 ("In some complex cases where the district court abused its
9 discretion in not appointing counsel under *Chaney*, a due process
10 violation may occur on habeas."). The Court "should consider the legal
11 complexity of the case, the factual complexity of the case, the petitioner's
12 ability to investigate and present his claim, and any other relevant
13 factors." *Abdullah v. Norris*, 18 F.3d 571, 573 (8th Cir. 1994).

14 Here, Petitioner has neither demonstrated that he is unable to
15 effectively litigate his case, nor that appointment of counsel is necessary
16 to prevent a violation of due process. Accordingly, Petitioner's Motion is
17 DENIED without prejudice.

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19 DATED: July 17, 2013

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22 Hon. Mitchell D. Dembin
23 U.S. Magistrate Judge
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